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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,155	02/12/2002	Kalvin Klundt	CA261/000CA-U	5048

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EXAMINER

CHOP, ANDREA MARIE

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 04/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/074,155

Applicant(s)

Klundt

Examiner
Andrea Chop

Art Unit
3677



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Feb 12, 2002 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Notice of Art Unit Number Change

1. Please note that the Art Unit number associated with this Application has changed from 3628 to 3677.

Priority

2. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

Drawings

3. It should be noted that the drawings have not yet been reviewed by a PTO draftsman. The drawings will be reviewed upon allowance of the application and Applicant will be apprised of their status accordingly.
4. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the jeweled surface must be shown or this feature should be cancelled from the claims (Claim 4). No new matter should be entered.

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Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not discuss that the ring is made of *molded* plastic.

Claim Rejections - 35 USC § 112

6. Claims 3, 7-9, 11, 12, 14-16, 18 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns Claim 3, this claim as presented is indefinite in that it is not clear as to whether it is Applicant's intention to positively recite the candy; the candy is defined in Claim 2 in a functional statement, however, Claim 3 positively recites the candy. The Examiner is treating the claims as being drawn to the ring and object holder alone. Applicant should amend the claims to clearly define what the claims are drawn to, i.e., the ring and object holder alone, or the ring and object holder and candy.

As concerns Claims 7, 11, 12 and 18, "the lower distal end of the spring" lacks antecedent basis.

As concerns Claim 14, "the *substantially* flat upper surface" lacks antecedent basis.

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As concerns Claim 16, this claim as presented is indefinite in that it is not clear as to whether it is Applicant's intention to positively recite the candy; the candy is defined in Claim 15 in a functional statement, however, Claim 16 positively recites the candy. The Examiner is treating the claims as being drawn to the ring and object holder alone. Applicant should amend the claims to clearly define what the claims are drawn to, i.e., the ring and object holder alone, or the ring and object holder and candy.

As concerns Claim 20, "said article of candy" lacks antecedent basis. Also, this claim as presented is indefinite in that it is not clear as to whether it is Applicant's intention to positively recite the candy; the candy is defined in Claim 19 in a functional statement, however, Claim 20 positively recites the candy. The Examiner is treating the claims as being drawn to the ring and object holder alone. Applicant should amend the claims to clearly define what the claims are drawn to, i.e., the ring and object holder alone, or the ring and object holder and candy.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-19 of copending Application No. 10/074,568. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming common subject matter as follows: a holder and spring assembly.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. Claims 1-3, 5, 7, 8, 10, 11, 14-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fishman US 6,077,144.

Fishman shows a ring 42, a spring 38, and a coupling member 34. The spring plate is 48.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishman US 6,077,144.

Fishman shows the claimed invention, but lacks a jeweled coupling member. It would have been an obvious matter of design choice to have a jeweled coupling member, since such a modification would have involved a mere change in the aesthetic design of the coupling member. A change in aesthetic design is recognized as being within the level of ordinary skill in the art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). In regards to the nature of the ring, it would have been an obvious matter of design choice to have a ring made of prongs, since such a modification would have involved a mere change in the aesthetic design of the ring. A change in aesthetic design is recognized as being within the level of ordinary skill in the art. *In re Seid*, 161

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F.2d 229, 73 USPQ 431 (CCPA 1947). In regards to the plastic spring, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have a plastic spring, since it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and plastic is a well known inexpensive material to use for springs.

Allowable Subject Matter

13. Claim 6 would be allowable if the double patenting rejection is overcome.
14. Claims 12 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims and if the double patenting rejection is overcome.

Patent Customers Advised to FAX Communications to the USPTO

15. In view of delays in mail delivery in recent days, we at the USPTO would like to encourage you to communicate with the USPTO via facsimile. **Facsimile transmissions may be used for correspondence as set forth in 37 CFR 1.6 such as: amendments, petitions for extension of time, authorization to charge a deposit account, an IDS, terminal disclaimers, a notice of appeal, an appeal brief, CPAs under 37 CFR 1.53(d), and RCEs.**

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PTO Form 2038 should be used when authorizing payment by credit card; this form is maintained separate from the file to ensure confidentiality.

The USPTO has recently installed server software that enables us to automatically receive facsimile transmissions and route them to the appropriate groups. No special equipment is needed by our customers to use this system other than a regular facsimile machine. Each Technology Center has its own facsimile numbers associated with our server for Official replies to non-final Office actions and for Official replies to final Office actions. In addition, each Technology Center has a Customer Service Center on our server system and can answer any general application status questions you might have, can provide Examiner information and answer paper queries. The following is a list of all Official Facsimile numbers for Technology Center 3600:

TC 3600:

Before Final 703-872-9326

After Final 703-872-9327

Customer Service 703-872-9325

By using the Official Before Final and After Final numbers, our server system will automatically generate a return receipt that will include the number of pages received as well as the date and time the facsimile was received. Additionally, the return receipt will include an image of the received cover page. Applicants are advised to use the certificate of facsimile transmission procedures when submitting a reply to a non-final or final Office action by facsimile (see 37 CFR

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1.6 and 1.8). Applicants are also advised to retain the return receipt in the event that the Office has no record of the facsimile submission, whether the facsimile submission is a reply to an Office action (37 CFR 1.8(b)), or a continued prosecution application under 37 CFR 1.53(d)) (37 CFR 1.6(f)).

Note, however, the Office currently does not permit new application filings (other than a CPA under 37 CFR 1.53(d)), requests for reexamination, drawings, and certain correspondence set forth in 37 CFR 1.6(d) by facsimile.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The art cited shows structures similar to Applicant's.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea Chop whose telephone number is (703) 305-6358.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Andrea Chop
ANDREA CHOP
PATENT EXAMINER
Art Unit 3677

AMC
April 14, 2003